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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/718,181	11/20/2003	Evan Y. Ener	S51.12-0049	9322
164	7590	05/19/2006		EXAMINER
KINNEY & LANGE, P.A. THE KINNEY & LANGE BUILDING 312 SOUTH THIRD STREET MINNEAPOLIS, MN 55415-1002			SPISICH, GEORGE D	
			ART UNIT	PAPER NUMBER
			3616	

DATE MAILED: 05/19/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/718,181	ENER ET AL.	
	Examiner	Art Unit	
	George D. Spisich	3616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 21 February 2006.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) 13-17 is/are allowed.
- 6) Claim(s) 1 and 7 is/are rejected.
- 7) Claim(s) 2-6 and 8-12 is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 21 February 2006 is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All
 - b) Some *
 - c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____. | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____. |

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Applicant's Prior Art in Figure 1 in view of Smith et al. (USPN 6,189,901).

Applicant's Prior Art in Figure 1 shows a concrete pumping truck having frame rails, a hopper carried at the rear end of the truck and an outrigger system. However, Figure 1 does not show an auxiliary axle system pivotally mounted at the rear of the truck. It is well known in the art to mount an auxiliary axle system at the rear of a work vehicle that typically hauls heavy loads. These axle systems are pivoted with respect to the frame to contact the ground when needed and raised when not needed. These auxiliary axles help to distribute the weight of the vehicle and its load and improve the security of the vehicle by increasing the contact between the wheels and the ground for added traction and stability.

Smith et al. shows an auxiliary axle system having a pair of steerable wheels including means connected to a support structure of the vehicle for moving the auxiliary

axle between a lowered first position in contact with a ground surface and a second raised position elevated above the ground surface.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to mount the auxiliary axle system as taught by Smith et al. on the rear of the Prior Art Figure 1 as it is well known in the art to add an auxiliary axle to help distribute the load and increase traction and stability.

It is within the ordinary scope of one skilled in the art to make minor adjustments in spacing and orientation to accommodate the auxiliary axle with respect to the hopper on the rear end of the concrete truck in Applicant's Prior Art.

Response to Arguments

Applicant's arguments filed February 21, 2006 have been fully considered but they are not persuasive.

Applicant argues that due to the placement of the hopper in Applicant's Prior Art, it would not be possible to mount the auxiliary axle arrangement of Smith et al. Examiner disagrees and maintains the rejection. It is within the scope of one skilled in the art to make adjustments to spacing and orientation to provide an auxiliary axle on the concrete truck in Applicant's Prior Art.

Allowable Subject Matter

Claims 13-17 are allowed.

Claims 2-6 and 8-12 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Moran (USPN 6,419,247), Christenson et al. (USPN 5,597,174), Barry (USPN 6,155,277), Brandi (USPN 4,311,396).

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Art Unit: 3616

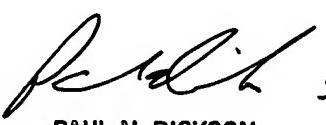
Any inquiry concerning this communication or earlier communications from the examiner should be directed to George D. Spisich whose telephone number is (571) 272-6676. The examiner can normally be reached on Monday-Friday 9:00 to 6:30 except alt. Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul Dickson can be reached on (571) 272-6669. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

George D. Spisich
May 15, 2006



 5/15/06
PAUL N. DICKSON
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600